

PAUL J. FISHMAN
United States Attorney
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Newark, NJ 07102
(973) 645-2829

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Newark Violations Bureau,

: **Hon.**

Plaintiff,

v.

: Civil Action No.

United States Postal Service,

: **NOTICE OF REMOVAL**

Defendant.

:

TO: Newark Violation Bureau
Municipal Court of Newark
31 Green Street
Newark, New Jersey 07102

Essex County Prosecutor's Office
Veteran's Courthouse
50 West Market Street
Newark, New Jersey 07102

Municipal Court of Newark
31 Green Street
Newark, New Jersey 07102

Defendant, the United States of America, acting on behalf of the United States Postal Service (hereinafter "Postal Service"), through its undersigned counsel, hereby removes this action pursuant to 28 U.S.C. § 1442(a)(1) and, in support thereof, states as follows:

1. The United States Postal Service is an agency of the federal government of the United States of America.

2. In this action, Plaintiff the Newark Violation Bureau, acting through the Newark Police Department ("Newark"), issued three separate "complaint-summons" to Manuel Lizardo, a Letter Box Mechanic for the Postal Service, on February 22, 2012, while he driving a Postal

Service Vehicle. The complaint-summonses were issued while Mr. Lizardo was acting within the scope of his duty as an employee of the Postal Service. Specifically, the complaint-summonses allege that: (1) the Postal Service vehicle was unregistered; (2) Mr. Lizardo failed to wear a seatbelt; and (3) was operating a cellphone. As a result of this traffic stop, the Newark Police Department impounded the Postal Service vehicle. The vehicle has since been retrieved by the Postal Service.

3. The United States, through Mr. Lizardo, was served with the complaint-summonses on February 22, 2012 by Newark Police Officer L. Oyola, badge # 7857. Copies of the complaint-summonses are attached hereto as Exhibit 1.

4. This case presents a claim against an agency of the United States, in that the Postal Service is an agency of the federal government and its employee was acting within the scope of his employment, and thus is removable to the United States District Court under 28 U.C. § 1442(a)(1). Specifically, Postal Service vehicles - as well as all vehicles owned and operated by the United States - need not register in the state in which they are operated.

5. With regard to the remaining complaint-summonses alleging failure to wear a seatbelt and operating a cellphone, as Mr. Lizardo was acting within the scope of his employment, this action is removable to the United States District Court under 28 U.C. § 1442(a)(1). Further, this Court could exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). Specifically, all three complaint-summonses arise from the same incident and, therefore, are part of the same case and controversy.

6. As this removal is under 28 U.S.C. § 1442(a)(1), removal is proper without the need for the consent of any other party. *Akin v. Ashland Chem. Co.*, 156 F.3d 1030, 1034 (10th

Cir.1998); *Doe v. Kerwood*, 969 F.2d 165, 168 (5th Cir.1992); *Ely Valley Mines, Inc. v. Hartford Accident and Indem. Co.*, 644 F.2d 1310, 1314-15 (9th Cir.1981); *Bradford v. Harding*, 284 F.2d 307, 310 (2d Cir.1960).

7. A copy of this Notice is being filed with the Municipal Court of Newark; copies are also being served on the plaintiff.

PAUL J. FISHMAN
United States Attorney

/s/ Jordan M. Anger
JORDAN M. ANGER
Assistant U.S. Attorney

Dated: March 19, 2012

EXHIBIT 1

NEWARK, NJ 07102

YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED:

DRIVER'S LICENSE NUMBER	8476751006105442
EXP. DATE	8/13
STATE	NJ
<input type="checkbox"/> Commercial License	

THE UNDERSIGNED CERTIFIES THAT

Name	First	Initial	Last	(Please Print)
Address	130 3RD AVENUE 1ST FL.			
City	Newark			
State	NJ			
Zip Code	07102			
Telephone				
Birth Date	5/5/76	Eyes	BRN	Sex
Weight	150	Height	5'8"	Restrictions

DID UNLAWFULLY (PARK) (OPERATE) A

Make of Vehicle	CHEVY	Year	04	Body Type	Van	Color	White
Lic. Plate No.	NIA	State	NIA	Exp. Date	NIA	<input type="checkbox"/> Commercial Vehicle	
Offense Date	Month	2	Day	22	Year	12	Time
Hour	11:30	AM	PM				
LOCATION OF OFFENSE	City of Newark & Victoria Ave						
Municipality	Newark	County	Essex	Mun. Code (Offense)	0714		

AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE (ONE CHARGE PER COMPLAINT)

TRAFFIC OFFENSES - (check one) - TITLE 39:

- | | |
|--|--|
| <input checked="" type="checkbox"/> 1 3-4 Unregistered vehicle | <input type="checkbox"/> 7 4-85 Improper passing |
| <input type="checkbox"/> 2 3-29 Failure to exhibit documents | <input type="checkbox"/> 8 4-97 Careless driving |
| <input type="checkbox"/> 3 3-33 Unclear plates | <input type="checkbox"/> 9 4-124 Failure to turn |
| <input type="checkbox"/> 4 3-66 Maintenance of lamps | <input type="checkbox"/> 10 4-144 Failure to stop or yield |
| <input type="checkbox"/> 5 3-76.2f Failure to wear seatbelt | <input type="checkbox"/> 11 8-1 Failure to inspect |
| <input type="checkbox"/> 6 4-81 Failure to observe signal | <input type="checkbox"/> 12 8-4 Failure to make repairs |

☒ 13 4-98 Speeding _____ MPH in a _____ MPH zone

IN EXCESS OF SPEED LIMIT BY:

- | | | | | | |
|--------------------------------------|--|--|------------------------------------|------------------------------------|------------------------------------|
| <input type="checkbox"/> 1-9 MPH | <input type="checkbox"/> 10-14 MPH | <input type="checkbox"/> 15-19 MPH | <input type="checkbox"/> 20-24 MPH | <input type="checkbox"/> 25-29 MPH | <input type="checkbox"/> 30-34 MPH |
| <input type="checkbox"/> 65 MPH Zone | <input type="checkbox"/> Safe Corridor | <input type="checkbox"/> Construction Zone | | | |

PARKING OFFENSE

- | | | |
|---|--|---------------------------------|
| <input type="checkbox"/> Overtime Meter No. | <input type="checkbox"/> Prohibited Area | <input type="checkbox"/> Double |
|---|--|---------------------------------|

OTHER TRAFFIC / PARKING OFFENSE (Describe)

Using Cellphone w/operating M.V.

Statute No. 39:4-97.3 Ordinance Code No.

THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE.

Signature of Complaining Witness _____ Officer's ID No. 7857

NOTICE TO APPEAR

<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time	AM	PM
<input type="checkbox"/> Accident	<input type="checkbox"/> Property Damage	<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Death/Serious Bodily Injury				

CONDITIONS	AREA	<input type="checkbox"/> Business	<input type="checkbox"/> School	<input type="checkbox"/> Residential	<input type="checkbox"/> Rural
ROAD	<input type="checkbox"/> Dry	<input type="checkbox"/> Wet	<input type="checkbox"/> Snow	<input type="checkbox"/> Ice	
TRAFFIC	<input type="checkbox"/> Light	<input type="checkbox"/> Medium	<input type="checkbox"/> Heavy	<input type="checkbox"/> Fog	
VISIBILITY	<input type="checkbox"/> Clear	<input type="checkbox"/> Rain	<input type="checkbox"/> Snow	<input type="checkbox"/> Fog	

Equipment ☐ Helicopter ☐ Pace ☐ Speed Measurement Device ☐ EBSD

Equipment Operator's Name _____ Operator's ID No. _____ Unit Code _____

COMPLAINT-SUMMONS

UTT-1 (9-04)

NO FINE SCHEDULE AND WAIVER ON REVERSE SIDE
COMPLAINT-SUMMONS

No. AU 919137

DO NOT FOLD ENVELOPE
FROM:

1. PAYMENT AND GUILTY PLEA **PLEASE READ CAREFULLY**

You may plead guilty and pay the penalty, or the state may "pardon, acquiesce, forgive, excuse, and the offense is forgotten," leaving the attorney at a court appearance. The attorney's services and penalties are listed below. You may either sign on to waive the attorney's services and pay the penalty, or you may sign on to pay the penalty and have the attorney represent you. If you wish to pay the penalty, please contact the attorney on the front of this ticket.

Payments by mail are to be by check or money order made payable to this Municipal Court. **Do not send cash. Please print the ticket number on the front of the check or money order.** If payment is received by the court after your court date, you may be assessed additional penalties. A receipt will be sent to you only if your payment is accompanied by a self-addressed stamped envelope.

**2. OFFENSE IS NOT PAYABLE OR
COURT APPEARANCE REQUIRED**

If the offense charged on the reverse is not payable, or if Court Appearance Required* (see check box on reverse side) is checked, you must appear in court at the time and place indicated, even if you wish to plead guilty.

3. PLEA OF NOT GUILTY

If you wish to place an inquiry, you must notify the agent at the address and telephone number as shown above at least 7 days prior to the county date listed on the front of this ticket. If you fail to notify the agent, it may be necessary for you to make additional court appearances.

Send all payments to:

8:30 AM to 4:00 PM
Mon. - Fri.

**Violations Bureau
Municipal Court of Newark
P.O. Box 160
Newark, NJ 07101
Phone: (973) 733-6520
8:30 AM to 4:00 PM Mon. - F.**

 PLEASE NOTIFY COURT OF DISABILITY ACCOMMODATION NEEDS.

DO NOT FOLD

NOTICE

THESE ARE THE ONLY TWO COUNTRIES IN THE WORLD WHERE THE PRESIDENT IS A MEMBER OF THE PARLIAMENT. IN THE UNITED STATES, THE PRESIDENT IS A PARTIAL MEMBER OF THE EXECUTIVE BRANCH, BUT NOT OF THE LEGISLATIVE BRANCH. IN THE UNITED STATES, THE PRESIDENT IS A PARTIAL MEMBER OF THE EXECUTIVE BRANCH, BUT NOT OF THE LEGISLATIVE BRANCH.

THESE TWO FACTORS TOGETHER WILL BE SUFFICIENT TO
OBTAIN YOUR OWNERSHIP OF
ALL COMMERCIALS IN THE
OF TWO MORE SECONDS
DEPENDENT ON THE
OF THE OWNERSHIP OF
A NON-COMMERCIAL
THE OFFICIAL

PUT STAMP HERE
POST OFFICE WILL
NOT DELIVER
WITHOUT
POSTAGE

FIRST CLASS MAIL

MAIL TO:

**MUNICIPAL COURT OF NEWARK
P.O. BOX 160
NEWARK, NEW JERSEY 07101-0160**

REMOVE TO EXPOSE ADHESIVE

COURT I.D. PREFIX TICKET NUMBER MUNICIPAL COURT OF NEWARK
0714 AU 919138 31 GREEN STREET
 NEWARK, NJ 07102

YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO
 ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED:

DRIVER'S LICENSE NUMBER **14767 5744105762** STATE **NJ** EXP. DATE **8/13**

THE UNDERSIGNED CERTIFIES THAT:

Name **MICHAEL M. LITANO** (Please Print)
 Address **130 3RD AVENUE**
 City **NEWARK** State **NJ** Zip Code **07102** Telephone **973-5176**

Birth Date **5/24/76** Eyes **BRN** Sex **M** Weight **150** Height **5'8"** Restrictions **None**

Make of Vehicle **HEVY** Year **04** Body Type **Van** Color **White**
 Lic. Plate No. **NIA** State **NJ** Exp. Date **N/A**

OFFENSE DATE **2** Month **12** Day **22** Year **12** Time **11:30** AM/PM
 LOCATION OF OFFENSE **1** Municipality **Newark** County **Essex** Mun. Code (Offense) **0714**

AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE
 (ONE CHARGE PER COMPLAINT)

TRAFFIC OFFENSES - (check one) - TITLE 39:

<input type="checkbox"/> 3-4 Unregistered vehicle	<input type="checkbox"/> 4-85 Improper passing
<input type="checkbox"/> 3-29 Failure to exhibit documents	<input type="checkbox"/> 4-97 Careless driving
<input type="checkbox"/> 3-33 Unclear plates	<input type="checkbox"/> 4-124 Failure to turn
<input type="checkbox"/> 3-66 Maintenance of lamps	<input type="checkbox"/> 4-144 Failure to stop or yield
<input type="checkbox"/> 3-76.2f Failure to wear seatbelt	<input type="checkbox"/> 8-1 Failure to inspect
<input type="checkbox"/> 4-81 Failure to observe signal	<input type="checkbox"/> 8-4 Failure to make repairs
<input type="checkbox"/> 4-98 Speeding	

IN EXCESS OF SPEED LIMIT BY:
☐ 1-9 MPH ☐ 10-14 MPH ☐ 15-19 MPH ☐ 20-24 MPH ☐ 25-29 MPH ☐ 30-34 MPH
☐ 66 MPH Zone ☐ Safe Corridor ☐ Construction Zone

PARKING OFFENSE
☐ Prohibited Area ☐ Double

OTHER TRAFFIC / PARKING OFFENSE (Describe)
NO SEATBELT

Statute No. **39-3-76.2f** Ordinance Code No.

THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE
 GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE
 OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT
 CHARGING YOU WITH THAT OFFENSE.

Signature of Complaining Witness **[Signature]** Month **2** Day **22** Year **12**
 Officer's ID No. **7857**

NOTICE TO APPEAR
☐ COURT APPEARANCE REQUIRED
☐ Accident ☐ Property Damage ☐ Personal Injury ☐ Death/Serious Bodily Injury

CONDITIONS
 AREA ☐ Business ☐ School ☐ Residential ☐ Rural
 ROAD ☐ Dry ☐ Wet ☐ Snow ☐ Ice
 TRAFFIC ☐ Light ☐ Medium ☐ Heavy
 VISIBILITY ☐ Clear ☐ Rain ☐ Snow ☐ Fog

Equipment ☐ Helicopter ☐ Pace ☐ Speed Measurement Device ☐ EBTD
 Equipment Operator's Name _____ Operator's ID No. _____ Unit Code _____

COMPLAINT-SUMMONS
NO FINE SCHEDULE AND WAIVER ON REVERSE SIDE
IMPORTANT
No. AU 919138

COURT I.D.	PREFIX	TICKET NUMBER	MUNICIPAL COURT OF NEWARK
0714	AU	919139	31 GREEN STREET NEWARK, NJ 07102

YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THIS COURT TO ANSWER THIS COMPLAINT CHARGING YOU WITH THE OFFENSE LISTED:

DRIVER'S LICENSE NUMBER	EXP. DATE	STATE	<input type="checkbox"/> Commercial License
L4767 57661 05762	8/13	NJ	

THE UNDERSIGNED CERTIFIES THAT

Name	Address	City	State	Zip Code	Telephone
MICHAEL A. LITANO	130 310 AVE 1ST FLR	NEWARK	NJ	07104	

Birth Date	Eyes	Sex	Weight	Height	Restrictions
5/25/76	BROWN	M	185	5'10"	

DID UNLAWFULLY (PARK) (OPERATE) A

Make of Vehicle	Year	Body Type	Color	<input type="checkbox"/> Commercial Vehicle <input type="checkbox"/> Omnibus <input type="checkbox"/> Hazardous Material <input type="checkbox"/> Out of Service
CHEVY	04	VAN	WHITE	

Lic. Plate No.	State	Exp. Date	
NIA	NIA	NIA	

OFFENSE DATE	Month	Day	Year	Time	AM/PM
	2	22	12	11:30	AM

LOCATION OF OFFENSE	Describe Location
Newark	Victoria Ave & Victoria Ave

AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE (ONE CHARGE PER COMPLAINT)

TRAFFIC OFFENSES - (check one) - TITLE 39:

<input checked="" type="checkbox"/> 3-4 Unregistered vehicle <input type="checkbox"/> 3-29 Failure to exhibit documents <input type="checkbox"/> 3-33 Unclear plates <input type="checkbox"/> 3-66 Maintenance of lamps <input type="checkbox"/> 3-76.2f Failure to wear seatbelt <input type="checkbox"/> 4-81 Failure to observe signal	<input type="checkbox"/> 4-85 Improper passing <input type="checkbox"/> 4-97 Careless driving <input type="checkbox"/> 4-124 Failure to turn <input type="checkbox"/> 4-144 Failure to stop or yield <input type="checkbox"/> 8-1 Failure to inspect <input type="checkbox"/> 8-4 Failure to make repairs
--	--

☒ 4-98 Speeding _____ MPH in a _____ MPH zone

IN EXCESS OF SPEED LIMIT BY:

☐ 1-9 MPH
 ☐ 10-14 MPH
 ☐ 15-19 MPH
 ☐ 20-24 MPH
 ☐ 25-29 MPH
 ☐ 30-34 MPH
☐ 65 MPH Zone
☐ Safe Corridor
☐ Construction Zone

PARKING OFFENSE

☐ Overtime Meter No. _____
☐ Prohibited Area
☐ Double

OTHER TRAFFIC / PARKING OFFENSE (Describe)

NO Registration

Statute No. 39.3-4	Ordinance Code No.
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THE UNDERSIGNED FURTHER STATES THAT THERE ARE JUST AND REASONABLE GROUNDS TO BELIEVE THAT YOU COMMITTED THE ABOVE OFFENSE AND WILL FILE THIS COMPLAINT IN THIS COURT CHARGING YOU WITH THAT OFFENSE.

Signature of Complaining Witness	Officer's ID No. 7857
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NOTICE TO APPEAR

<input type="checkbox"/> COURT APPEARANCE REQUIRED	COURT DATE	Month	Day	Year	Time	AM/PM

<input type="checkbox"/> Accident	<input type="checkbox"/> Property Damage	<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Death/Serious Bodily Injury
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CONDITIONS	AREA	ROAD	TRAFFIC	VISIBILITY
	<input type="checkbox"/> Business	<input type="checkbox"/> Dry	<input type="checkbox"/> Light	<input type="checkbox"/> Clear
	<input type="checkbox"/> School	<input type="checkbox"/> Wet	<input type="checkbox"/> Medium	<input type="checkbox"/> Rain
	<input type="checkbox"/> Residential	<input type="checkbox"/> Snow	<input type="checkbox"/> Heavy	<input type="checkbox"/> Snow
	<input type="checkbox"/> Rural	<input type="checkbox"/> Ice	<input type="checkbox"/> Fog	

Equipment	Operator's Name	Operator's ID No.
<input type="checkbox"/> Helicopter <input type="checkbox"/> Pace <input type="checkbox"/> Speed Measurement Device <input type="checkbox"/> EBTD		

COMPLAINT-SUMMONS

No. AU 919139

FINE SCHEDULE AND WAIVER ON REVERSE SIDE

COMPLAINT-SUMMONS

